Committee
On Finance
Max Baucus, Ranking Member

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Contact: Laura Hayes
202-224-4515

Baucus Concerned By Unapproved Reorganization of the IRS

Senator Urges for Proper IRS Protocol When Creating New Posts and Hiring Senior Staff

(WASHINGTON, D.C.) U.S. Senator Max Baucus recently raised concerns over actions taken by Internal Revenue Service (IRS) Commissioner Mark W. Everson to reorganize the agency without formal IRS Oversight Board approval.

In congressional testimony on May 20, 2003, Everson announced the creation of two new Deputy Commissioner positions, the elimination of the current Deputy Commissioner position, the creation of a Chief of Staff position, as well as a hiring new personnel for the positions of Chief Information Officer and Commissioners for Large and Mid-Size Business, Small Business/Self-Employed, and Wage and Investment Divisions. None of these actions had been formally reviewed by the Board, as required by law.

On June 23, Baucus, along with Finance Committee Chairman Chuck Grassley, sent a letter to Commissioner Everson outlining their concerns and specifically citing the *IRS Restructuring and Reform Act of 1998*, which "was designed to ensure that any subsequent Commissioners did not precipitously reorganize the IRS as one of their first acts upon confirmation. As such, under section 1101, a specific management responsibility of the IRS Oversight Board is to “review and approve the Commissioner’s plans for any major reorganization of the Internal Revenue Service.”"

Commissioner Everson recently responded in a letter to Baucus that he "did not regard the creation of the two Deputy Commissioner positions, and the appointment of individuals to those positions cited in your letter, as a major reorganization requiring Oversight Board approval under the statute."

After reviewing the Commissioner's letter, Baucus stated that he continues to be concerned that each time a new Commissioner is appointed to the IRS too many "deck chairs are rearranged," causing operational delays and lack of consistency.

"Fundamental changes to the organization of the IRS should only be made after comprehensive review with the IRS Oversight Board, not as a result of a few phone calls," Baucus said. "The Board did not even hold a meeting to discuss this major reorganization before the Commissioner went forward with the plan. I will continue to raise my concerns with the Commissioner and the Board to ensure that the letter and spirit of the IRS Restructuring Act is followed."

Senator Baucus and Senator Grassley sent the following letter to IRS Commissioner Everson on June 23, 2003:

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Everson:

On May 20, 2003, at the congressional joint review hearing on the IRS and in a May 22, 2003 IRS release, you announced the creation of two new Deputy Commissioner positions, elimination of the current Deputy Commissioner position, creation of a Chief of Staff position, and appointment of persons to each of those new positions as well as a new Chief Information Officer and Commissioners for Large and Mid-Size Business, Small Business/Self-Employed, and Wage and Investment Divisions.

We are concerned that this reorganization was done without prior IRS Oversight Board (Board) review and approval. We are also troubled to learn that the selection and compensation of the executives affected by the recent announcements were done without prior Board review.

Section 1001 of the IRS Restructuring and Reform Act of 1998 provides that "[t]he Commissioner of Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service." Congress provided specific criteria for the plan based on the year-long study of the National Commission on Restructuring the IRS and congressional hearings. This section was designed to allow Commissioner Rossotti to implement congressional intent for a restructured IRS. Commissioner Rossotti met the requirements of this provision before the end of his five-year term.

Section 1101 of the IRS Restructuring and Reform Act of 1998 was designed to ensure that any subsequent Commissioners did not precipitously reorganize the IRS as one of their first acts upon confirmation. As such, under section 1101, a specific management responsibility of the IRS Oversight Board is to "review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service" [emphasis added]. Additionally, Section 1101 also provides that a specific management responsibility of the IRS Oversight Board is to "review the Commissioner's selection . . . and compensation of Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service."

The IRS has reorganized over 30 times since 1952. Reorganizations affecting the number of executives between the Commissioner and the career, rank-and-file IRS employees have occurred over twelve times.[1] This constant shuffling of the deck chairs was one of the primary motivations

[1] From 1952 until 1982, the IRS organization chart included one Deputy Commissioner. From 1982 through 1986, the IRS had 2 Associate Commissioners and one Deputy Commissioner. From 1987 through 1988, there were 2 Deputy Commissioners and one Senior Deputy Commissioner. In 1989, there were 2 Deputy Commissioners and one Chief. From 1990 through 1993, the IRS executive ranks included 3 Chiefs and one Deputy Commissioner. In 1994, there were 6 Chiefs and one Deputy Commissioner. At the beginning of 1995, there were 6 Chiefs, one Associate Commissioner, and one Deputy Commissioner. By the end of 1995, there were 4 Chiefs, one Associate Commissioner,

for inclusion of the Board's review and approval authority for major reorganizations. The Senate Report (105-174) of the 1998 Restructuring Act provides that:

> The National Commission on Restructuring the IRS . . . found that a number of factors contribute to current IRS management problems. The Restructuring Commission found that, while the Treasury is responsible for IRS oversight, it has generally provided little consistent strategic oversight or guidance to the IRS. . . . The Restructuring Commission concluded the following: "problems throughout the IRS cannot be solved without focus, consistency and direction from the top. The current structure . . . does not allow the IRS to set and maintain consistent long-term strategy and priorities, nor to develop and execute focused plans for improvement. Additionally, the structure does not ensure that the IRS budget, staffing and technology are targeted toward achieving organizational success." The Committee shares the concerns of the Commission, and believes that fundamental change in IRS management and oversight is essential.

The legislative history also provides examples of the reorganizations subject to Board review and approval. First, according to the conference report to the IRS Restructuring and Reform Act of 1998, "[i]t is intended that major reorganizations subject to the Board's review and approval are limited to major changes in organizational structure, such as the 1995 IRS reorganization that combined 7 regions into 4 and 63 districts into 33." More specifically, the Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS (June 25, 1997) provides that, "[t]he Board . . . should be focused on providing strategic direction to the IRS. The Board's powers should be enumerated by the Congress, as follows: Review and approve the Commissioner's recommendations regarding major operational and organizational plans (e.g., plans for modernizing technology systems; training; outsourcing; managed competition; reorganization of the Commissioner's office; reorganization of IRS business units.)." [emphasis added]. The Congress created the IRS Oversight Board to provide continuity and accountability.

In theory, we agree with the premise that the Commissioner, similar to Chief Executive Officers in the private sector, should have the ability to structure his or her top team to meet the commissioner's management style. However, the National Commission on Restructuring the IRS and Congress realized that the benefits of such management flexibility does not outweigh the constant uncertainty, confusion to taxpayers and employees, and costs associated with reorganization of the IRS with each new commissioner. The Board's review and approval does not equate to a denial of a commissioner's ability to structure his or her top team. Rather, the Board's review and approval was created to provide continuity by educating new commissioners as to the rationale and benefits associated with certain organizational decisions. Thus, a new commissioner has the burden of convincing the board that the benefits from yet another reorganization outweigh the uncertainty, confusion, and costs.

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and one Deputy Commissioner. In 1996, the IRS had 3 Chiefs, one Associate Commissioner, and one Deputy Commissioner. As of September 30, 1998, there were 3 Chiefs and 2 Deputy Commissioners. By October 1, 2000, the IRS had one Chief, 4 Division Commissioners, and one Deputy Commissioner. In 2001, the IRS had 4 Division Commissioners and two Deputy Commissioners. In 2002, the IRS had 4 Division Commissioners, one Associate Commissioner, one Chief, and two Deputy Commissioners. (For comparability, the list excludes the addition of the Chief Financial Officer and the Chief Communications and Liaison positions as well as the Chief Counsel and the Chiefs of Criminal Investigations, Appeals, and Agency-Wide Shared Services.)

The success of the National Commission on Restructuring the IRS and Congress are dependent on IRS commissioners making full use of an independent IRS Oversight Board. Congressional intent cannot be realized if the Administration and the IRS fail to adhere to the requirements of the law by circumventing the Board. More importantly, congressional intent cannot be realized if the Board chooses to abdicate its responsibilities or if the commissioner fails to follow the spirit, if not the requirements, of the law.

According to recent reports, at an IRS research conference on June 10, 2003, you stated that the creation of two deputy commissioner positions at the IRS, one for service and enforcement and the other for operations support, is part of fundamental change at the tax agency. [emphasis added] Therefore, we request that you provide a complete report on the reorganization and executive appointments, including copies of memoranda, minutes, analyses, communications made by the IRS to the Board, and other documentation used to support the reorganization plan.

Sincerely yours,

Max Baucus
Ranking Member

Charles E. Grassley
Chairman

cc: The Honorable John Snow